



Christine Chang Pro Se, individually  
and Eric Sun, disabled  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE CHANG, individually )  
and ERIC SUN, disabled )

Plaintiffs,

vs.

ROCKRIDGE MANOR  
CONDOMINIUM et al.

Defendants.

Case No: C-07-4005 EMC

MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF PLAINTIFFS' OPPOSITION TO  
DEFENDANT EVA AMMANN'S  
MOTION TO DISMISS AND FOR  
SUMMARY JUDGMENT;  
AND FOR LEAVE TO APPEAL  
ORDER DENYING PLAINTIFF  
CHANG'S REQUEST FOR COURT  
APPOINTED COUNSEL WITH COST  
PAID BY PLAINTIFF CHANG;  
AND FOR LEAVE TO APPEAL ORDER  
DISMISSING PLAINTIFF SUN CAUSED  
BY INABILITY TO RETAIN COUNSEL

Date:

Time:

Courtroom: Room C, 15<sup>th</sup> Floor

Judge: Magistrate Judge Edward M. Chen

1 **INTRODUCTION**

2 1. Plaintiffs Chang and Sun's state action Christine Chang v. Eva Ammann  
3 No. 2001-023364 was concluded by a settlement of release, dismissal and order  
4 approving compromise on April 5, 2005. See Declaration of Paul A. Conroy  
5 Exhibit "G" filed on November 2, 2007.

6 2. Plaintiffs filed this instant action No. C-07-4005 EMC against the Rockridge  
7 Manor Defendant Eva Ammann who has made motions to dismiss and for summary  
8 judgment.

9 **LEGAL ARGUMENT**

10 3. The Rockridge Manor Homeowners Association, board of directors, president of  
11 the board, and manager owe a fiduciary duty to the homeowners. They govern Bylaws,  
12 The Common Interest Development Declaration (CC&R), The Operating Rules of the  
13 Association, and any amendments to the above documents. They also govern homeowners  
14 association dues making every decisions in relate to financial businesses of Rockridge  
15 Manor Condominium. These officers and manager are practically in charge of every  
16 aspects of Rockridge Manor Condominium.

17 4. In *Posey v. Leavitt*, 229 Cal. App. 3d 1236 (1991), the appeals court reversed and  
18 remanded the case for the condo owner who sued the homeowners association for breach  
19 of fiduciary duty not enforcing the provisions of the CC&R, and whether there was  
20 irreparable injury sustained by the condo owner. Any one of the homeowners may take  
21 legal action to enforce the restrictions against what he considers to be a violation by one  
22 or more other owners. Any homeowner who believes that the association is not discharge  
23 its duty to enforce the restrictions has an individual cause of action against the association  
24 and the person who has violated the restrictions.

25 5. See *Bankers Trust Company v. Pacific Employers Insurance Company*,  
26 282 F.2d 106 (1960). After appellant obtained a judgment against appellee, it filed suit

1 against appellee for **fraud** in the inducement, alleging that appellee misrepresented the  
2 value of the policies. The appellant challenged an order of the district court granting  
3 summary judgment for appellee in a suit for **fraud**. The appeals court reversed the  
4 judgment holding that appellant did not make an election of remedies by obtaining the prior  
5 judgment on the policies, because a right of action on a contract and one for **fraud** in  
6 inducing a party to enter into such contract could exist at the same time, recovery on one  
7 of the causes did not bar a subsequent action on the other. The **fraud** suit was a distinct  
8 cause of action arising out of separate and distinct facts. It also held that the suit was  
9 not barred by res judicata because the causes of action were not identical. The appeals  
10 court rejected the district court's ruling that appellant waived its right to claim any  
11 amount over that recovered in the prior suit, since it **did not waive a fraud** by enforcing  
12 a contract which it had fully performed before discovering the **fraud**. Appellant was not  
13 estopped from filing suit as it did not mislead appellee to its injury.

14 6. In *Hamilton v. Prudential Financial*, 2007 U.S. Dist. LEXIS 72034, plaintiff entered  
15 into a written contract for a long term disability insurance policy with defendant, and  
16 received total disability benefits from 1999 until 2005. In November 2005 defendant  
17 terminated his benefits despite his allegedly continuing disability. Plaintiff alleges the  
18 defendant acted despicably, willfully, wantonly, oppressively, fraudulently, or in  
19 conscious disregard of the plaintiff's rights. Plaintiff further alleges defendant acted with  
20 intent to annoy, harass or injure plaintiff and pursued an outrageous course of conduct,  
21 intentionally and recklessly, proximately causing plaintiff severe emotional distress, shock  
22 and other highly unpleasant emotions. Plaintiff claims that as a result of the defendant's  
23 conduct, plaintiff has "suffered mental and emotional distress, including, but not limited  
24 to, frustration, depression, nervousness and anxiety."

25 7. To state a claim for **intentional infliction of emotional distress**, plaintiff must allege:  
26 (1) outrageous conduct by defendant; (2) defendant intentionally caused or recklessly  
27

1 disregarded the probability of causing emotional distress; (3) plaintiff suffered severe  
2 or extreme emotional distress; and (4) defendant's outrageous conduct was the actual  
3 and proximate cause of plaintiff's emotional distress.

4 8. The Rockridge Manor Defendants Eva Ammann, Charles Blakeney, and Defense  
5 Attorneys Sara Allman and Paul Conroy and Chinh Vo's **outrageous conduct** corrupting  
6 Plaintiffs' attorneys in order to exonerate their liabilities in the assault/battery injury against  
7 Plaintiffs, Plaintiffs' attorney Brett Allen inserted the Rockridge Manor Homeowners  
8 Association in the First Amended Complaint secretly against Plaintiffs' will, Plaintiffs'  
9 attorney Pamela Zimba perjured alongside the assault/battery assailant Constance Celaya  
10 who won the verdict with remedy against Plaintiffs, Pamela Zimba induced disabled  
11 Plaintiff Sun to take the stand in the assault/battery trial lying it would help Plaintiffs win  
12 the case, Pamela Zimba submitted disabled Plaintiff Sun to Defense Attorneys Sara Allman,  
13 Paul Conroy, and Chinh Vo's depositions lying that Plaintiff Sun could not claim disability  
14 but to take defense attorneys multiple depositions. The Rockridge Manor Defendants and  
15 Defense Attorneys **intentionally caused and recklessly disregarded** causing Plaintiffs  
16 emotional distress. Plaintiff Chang and especially Plaintiff Sun **suffered severe and**  
17 **extreme emotional distress**. Plaintiff Sun mutilated himself at home during those times  
18 being forced to take the stand in the assault/battery trial where Pamela Zimba and assailant  
19 Constance Celaya competing with each other perjuring in the State Court, and being  
20 forced to take depositions by the Defense Attorneys Sara Allman, Paul Conroy, and Chinh  
21 Vo, and being mentally disabled without guardian-ad-litem filed for protection purposefully  
22 done by Pamela Zimba. Rockridge Manor Defendants Eva Ammann, Charles Blakeney, and  
23 Defense Attorneys Sara Allman, Paul Conroy, Chinh Vo's **outrageous conduct was the**  
24 **actual and proximate cause** of Plaintiffs' severe and extreme emotional distress.

25 9. California Business and Professions Code Section 17200 – The statute of limitation  
26 for a Section 17200 claim is four years. See Cal. Bus. & Prof. Code Section 17208.



1 Upon information and belief and allege the Rockridge Manor Defendants Homeowners  
2 Association, Board of Directors, President of Board Charles Blakeney, and Manager  
3 Eva Ammann are in a **fiduciary relationship** with all homeowners (see this memorandum  
4 paragraphs 3 and 4). The statute does not run until Plaintiffs have notice or knowledge of  
5 facts to put a reasonable person on inquiry. Plaintiffs found out the **fraud** on May 18, 2005.  
6 See *Hobart v. Hobart Estate Co*, 26 Cal. 2d 412 (1945); *Miller v. Bechtel Corp.*,  
7 33 Cal. 3d 868 (1983); *Dale Sakai v. Merrill Lynch*, 2007 U.S. Dist. LEXIS 35958.

8 **CONCLUSION**

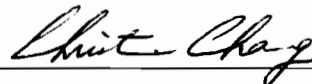
9 10. Plaintiffs have made definite statements pursuant to FRCP Rule 12(e) with distinct  
10 causes of action - fraud and California Business and Professions Code 17200, showing  
11 genuine issues as to material fact, and are entitled to a jury trial..

12 11. Plaintiffs respectfully request that Rockridge Manor Defendant Eva Ammann's  
13 motion to dismiss and for summary judgment be defeated in its entirety, and the causes  
14 of action can be heard and determined by a jury.

15 **DECLARATION**

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct to the best of my knowledge.

18 Executed on May 21, 2008, at Alameda, California.

19  
20  
21 

22 Christine Chang, Plaintiff  
23  
24  
25  
26  
27

### CERTIFICATE OF SERVICE

I, CHRISTINE CHANG, hereby certify that on May 21, 2008, I forwarded a true and correct copy of:

1. Plaintiffs' opposition to Defendant Eva Ammann's motion to dismiss and for summary judgment; and for leave to appeal order denying Plaintiff Chang's request for court appointed counsel with cost paid by Plaintiff Chang; and for leave to appeal order dismissing Plaintiff Sun caused by inability to retain counsel
2. Memorandum of points and authorities in support of Plaintiffs' opposition to Defendant Eva Ammann's motion to dismiss and for summary judgment; and for leave to appeal order denying ...appointed counsel; and for leave to appeal Order dismissing Plaintiff Sun...

To Defendants' Counsels by placing a true copy and thereof in a sealed envelope with first class postage prepaid and addressed as follows:

Gaylynn Kirn Conant  
Lombardi, Loper & Conant, LLP  
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1999 Harrison Street, Suite 2600  
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Lee J. Danforth  
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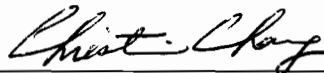
Andrew Adler (**faxed on 5/21**)  
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I caused such envelopes to be placed for collection and mailing in the United States Mail at San Francisco, California.

Dated: May 21, 2008

By   
Christine Chang, Plaintiff